

## FCC MAIL SECTION

Before the  
Federal Communications CommissionFEB 12 3 43 PM '90  
Washington, DC 20554

DISPATCHED MM Docket No. 90-8 ✓

## In re Applications of

EVE ACKERMAN File No. BPH-871123MA  
(hereafter "Ackerman")CHARLEY C. WHITE AND File No. BPH-871124MC  
GREGORY G. PERICH  
(hereafter "White")WAYNE G. FIELDS AND File No. BPH-871124ME  
GERALDINE Y. MILLER  
d/b/a L.L.  
BROADCASTING  
(hereafter "Broadcasting")ALACHUA File No. BPH-871124MN  
BROADCASTERS,  
INC.  
(hereafter "Alachua")BRENT L. HARMON AND File No. BPH-871124MQ  
ELVIN L. HARMON  
d/b/a HARMON  
BROADCAST PARTNERS  
(hereafter "Harmon")LYNN T. RIVERS AND File No. BPH-871124MV  
JAMES S. RIVERS III  
(hereafter "Rivers")MINORITY MEDIA, File No. BPH-871216ML  
INC. (Previously Dismissed)  
(hereafter "Media")For Construction Permit  
for a New FM Station on Channel 223A  
in Alachua, Florida

## HEARING DESIGNATION ORDER

Adopted: January 9, 1990; Released: February 12, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Alachua*. *Alachua* responded "no" to Section III, FCC Form 301 ("Financial Qualifications"), stating that "Arrangements are being prepared at this time for financing of the station."to the application." Accordingly, since no evidence has been produced indicating that *Alachua* has obtained the necessary financing, a financial issue will be specified.3. *Media*. On February 12, 1988, *Media* filed a Petition for Waiver of Tenderability Defect Code ("Petition"), seeking reversal of the January 13, 1988 return of its application by the Chief, FM Branch. *Media's* application was found untenderable because it was filed after November 24, 1987, the close of the applicable window. See 47 C.F.R. § 73.3564(d) of the Rules.<sup>1</sup>4. The *Media* Petition states it mailed its application to the Commission "before midnight 24 November 1987," and claims that, "the fact that the application was delayed by U.S. mail service and further by the Commission FM Branch Service should be lawful grounds for the Commission to waive the tenderability defect . . ." *Media* further asserts that "the statute (sic) provided (sic) by Congress on Minority Ownership of Broadcast Stations should superse (sic) and prevail over the Tenderability Defect Code cited by the FM Branch Chief (because) [it] was the sole Minority applicant for the proposed channel . . ." *Petition*, para. 7.<sup>2</sup>5. A petition for reconsideration must be based upon newly discovered evidence or upon errors of fact or law in the action for which reconsideration is sought. See 47 C.F.R. §§ 1.106(c) and (d). In the absence of such a showing, reconsideration will not be granted for the purpose of reviewing matters which the Commission has already considered and resolved. *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *affd. sub nom. Lorain Journal co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert den.* 383 U.S. 967 (1966); *Employment practices of Charlotte, North Carolina Stations*, 77 FCC 2d 1 (1980). Furthermore, in accordance with the *Report and Order* in Docket 84-750, 50 FR 19936 (1985), the only basis for reversing an earlier finding of untenderability is a demonstration that the Commission erred in its earlier determination. See specifically Appendix D to the *Report and Order*, *supra*.6. We have examined the instant petition and have determined that the Commission did not make an error in returning the *Media* application as late-filed, and unacceptable for tender. While it is desirable to have as many qualified applicants as possible from which to select a broadcast licensee, "we have recently undertaken to place greater emphasis on providing service to the public in the most efficient, expeditious manner possible. Temporizing with flawed proposals has in the past disserved the public interest by inordinately delaying the initiation of new service." *Chudy Broadcasting Corporation*, 58 RR 2d 133, 134, 134 n. 7 (1985). Moreover, concerning *Media's* minority status, *Media* has not demonstrated unusual or compelling circumstances to warrant favorable action, thus the request for waiver is hereby denied. See, *FCC Overrules Caldwell Television Associates, Ltd.*, FCC 85-534, Mimeo No. 36206, Released October 4, 1985. Accordingly, the *Media* petition will be denied.

7. Applicants have petitioned for leave to amend their applications on dates shown below. The accompanying amendments were filed after February 22, 1988 the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

White Broadcasting Partnership  
October 5, 1991


EXHIBIT 8

DECLARATION OF NO CONSIDERATION

We, CHARLEY C. WHITE and GREGORY G. PERICH, do hereby declare under penalty of perjury that our application (File No. BPH-871124MC) was not filed for the purpose of reaching or carrying out any agreement pursuant to which we would be entitled to receive any consideration in return for the withdrawal of our application, and that we have not been paid or promised any consideration whatsoever, direct or indirect, in return for the dismissal of our application for a construction permit for a new FM broadcast station at Alachua, Florida.

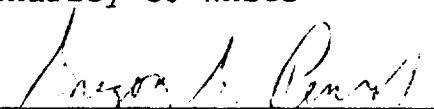
Date:

March 1st, 1990

  
Charley C. White

Date:

March 1st, 1990

  
Gregory G. Perich

White Broadcasting Partnership  
October 5, 1991

**EXHIBIT 9**

1 record will reflect, April 1990 when both applications  
2 were pending at the same time.

3 A Yes, sir.

4 Q Suppose January 1990 rolled along and Baldwin  
5 was granted. What would you have then done?

6 A Well, it was always my intention to dismiss  
7 or get out of the Alachua station. I had decided that  
8 probably October of 1989 and -- so some way I probably  
9 would have had my portion dismissed or whatever was  
10 legally right. But I would have been there for  
11 Baldwin. Baldwin would have been the primary -- my  
12 primary goal in life.

13 Q Now, let's look at the other possibility.  
14 Again, both applications are on file. It's January  
15 1990. You open the mail and there is the construction  
16 permit for Alachua. It is granted.

17 Now, in that case, would you have then  
18 followed through and gone to Alachua to build that  
19 station?

20 A That's very, very hypothetical. I don't  
21 think in a million years something like that would  
22 happen. But I'll repeat that it was my intention to  
23 early on to dismiss Alachua.

24 Q But supposing that you had not dismissed it  
25 and Alachua were granted. Would you have in fact moved

White Broadcasting Partnership  
October 5, 1991

EXHIBIT 10

## ARTICLE VIII. RESTRICTIONS ON TRANSFER OF STOCK

Shares of capital stock of this corporation shall be issued initially to the following persons and in the amounts set opposite their names:

Charley C. White                      1.000 shares

Gregory G. Perich                    1.000 shares

Shares held by the initial shareholders listed above may not be resold or otherwise transferred to other persons unless first offered to the remaining shareholders or to this corporation. The price and terms at which and at the time within which those shares may be offered and sold shall be further specified by written agreement among all of the shareholders and this corporation.

## ARTICLE IX. PREEMPTIVE RIGHTS

Every shareholder, upon the sale for cash of any new stock of this corporation, shall have the right to purchase their pro rata share (as nearly as may be done without issuance of fractional shares) at the price which it is offered to others.

## ARTICLE X. OFFICERS

The everyday operation of the corporation shall be conducted and managed by the officers of the corporation which shall be:

Charley C. White - President

Gregory G. Perich - Secretary/ Treasurer

White Broadcasting Partnership  
October 5, 1991

EXHIBIT 11



Mc CABE & ALLEN

THE CONNER CENTER  
9105 OWENS DRIVE  
POST OFFICE BOX 2126  
FASSAS PARK, VIRGINIA 22111  
(703) 361-2278  
FACS (703) 361-0594

Thomas J. McCabe  
Robert G. Allen  
Denise B. Moline

Douglas W. Harold, Jr.  
Lloyd D. Young  
*Of Counsel*

2000 L STREET, N.W.  
SUITE 200  
WASHINGTON, D.C. 20036  
(202) 452-7872  
Telex 373-0708  
FACS (202) 833-3843

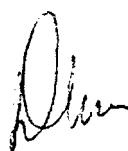
Direct Correspondence to  
office.

Virginia

June 28, 1991

MEMORANDUM

To: All Counsel  
MM Docket 91-10  
Baldwin, Florida

From: Denise B. Moline 

Re: Supplemental Document Production

On behalf of Charley Cecil and Dianna Mae White, d/b/a White Broadcasting Partnership, there are transmitted herewith supplemental documents which were requested by deposing parties during depositions which took place earlier this week. Some, but not all monetary amounts have been expurgated from the enclosed documents, depending on the purpose of the request for the document.

Should there be any question, please contact me.

cc: Hon. Edward Luton  
Paulette Laden, Esq.

White Broadcasting Partnership  
October 5, 1991

EXHIBIT 12

**THOMAS R. RHODEN AGENCY INC.**

515 56th Street  
Macclenny, Florida 32063  
(904) 259-3892 259-6431

December 15, 1989

TO WHOM IT MAY CONCERN:

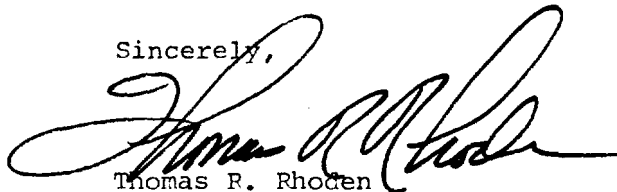
I personally inspected the property on December 11, 1989 belonging to Charles and Dianne White, located at 707 Newport Rd. in Macclenny, Florida.

The property has a value between \$51,000.00 to \$54,000.00. Legal description, lot 14 Pine Grove Estates, PB 2, P 48, Desc. in or 75, P 715 POM 133A.

If I can be of any other assistance please don't hesitate to call.

Thanking you in advance, I am

Sincerely,



Thomas R. Rhoden  
Reg. Real Estate  
Broker

TF/tr

White Broadcasting Partnership  
October 5, 1991

EXHIBIT 13

# The United States of America

## Federal Communications Commission

### GENERAL RADIOTELEPHONE OPERATOR LICENSE

(General Radiotelephone Certificate)

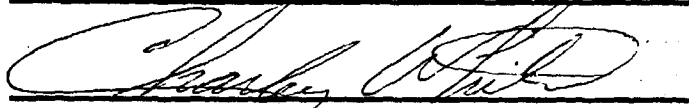
This certifies that the individual named below is a licensed radio operator and is authorized to operate licensed radio stations for which this class of license is valid. The authority granted is subject to any endorsement placed on this license. The authority granted is also subject to the orders, rules, and regulations of the Federal Communications Commission, the statutes of the United States, and the provision of any treaties to which the United States is a party, which are binding upon radio operators.

This license may not be assigned or transferred to any other person. This license is valid for the lifetime of the holder unless suspended by the FCC.

Endorsement: **NONE**

Licensee: CHARLEY C. WHITE

		Place of Issuance
		TAMPA, FL.
Date of Birth	Issuance Date	License Number
DECEMBER 23, 1948	JANUARY 2, 1985	PG-7T-8109

  
Signature of Licensee



CERTIFICATE OF SERVICE

I, Dianna M. White, this 7th day of October, 1991, hereby certify that I have mailed copies of White Broadcasting partnership's Opposition to Motion to Enlarge Issues Against White by first-class United States mail or by Federal Express where noted, postage prepaid, to the following:

\*The Honorable Edward Luton  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 225  
Washington, D.C. 20554

\*Y. Paulette Laden, Esq.  
Hearing Branch  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554  
Counsel for the Mass Media Bureau

David Honig, Esq.  
1800 N.W. 187th Street  
Miami, Florida 33056  
Counsel for Peaches Broadcasting, Ltd.

Arthur Belendiuk, Esq.  
Smithwick & Belendiuk, P.C.  
2033 M Street, N.W., Suite 207  
Washington, D.C. 20036  
Counsel for Douglas Johnson

James L. Winston, Esq.  
Rubin, Winston & Diercks  
1730 M Street, N.W., Suite 412  
Washington, D.C. 20036  
Counsel for Northeast Florida Broadcasting

Avelino G. Halagao, Esq.  
7799 Leesburg Pike, Suite 900  
Falls Church, VA 22043  
Counsel for JEM Productions, Ltd. Partnership

\* Sent Overnight  
Federal Express

  
Dianna M. White